

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALVIN WILLIS,

Plaintiff,

v.

MATTHEW TAYLOR, et al.,

Defendants.

Case No. [22-cv-03427-HSG](#)

**ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE WHY CASE SHOULD
NOT BE DISMISSED FOR FAILURE
TO PROSECUTE**

Re: Dkt. No. 39

In June 2022, Plaintiff, a California state inmate who is currently housed at California Men's Colony, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that, on March 14, 2019, San Quentin State Prison ("SQSP") correctional officer Taylor used excessive force on him, in violation of the Eighth Amendment. Dkt. Nos. 1, 11. For the reasons set forth below and as detailed below, the Court ORDERS Plaintiff's counsel to file a notice of appearance, and ORDERS the parties to file certain status reports or an answer regarding the November 4, 2025 deposition.

I. Background

On January 27, 2025, the Court set an April 30, 2025 deadline for filing dispositive motions. Dkt. No. 31. Over the next ten months, Defendant attempted to depose Plaintiff four times without success.

- **March 24, 2025.** Plaintiff was unexpectedly transferred to a different fire camp, requiring the cancellation of this deposition. Dkt. No. 32 at 2.
- **May 29, 2025.** Plaintiff refused to participate in this deposition, stating that he was in the process of retaining counsel for this case. Defense counsel and Plaintiff agreed the deposition would be rescheduled once Plaintiff retained counsel or if Plaintiff were unable to retain counsel. Dkt. No. 34 at 1-2, 11.

- **July 15, 2025.** Plaintiff refused to sit for this deposition, stating that he was unaware that the deposition had been scheduled, and that he had not received the Court's June 5, 2025 Order requiring Plaintiff to have his counsel file a notice of appearance by June 16, 2025. Dkt. No. 36-1 at 18-19. Plaintiff stated that he had been unable to obtain an attorney because of excessive transfers; that he just needed "a little bit more time, whether it's 30 days, 60 days" to obtain counsel; and that if he were unable to retain an attorney within any time period ordered by the Court he would proceed with the deposition. Dkt. No. 36-1 at 19-22.
- **October 7, 2025.** Plaintiff informed Defendant's counsel that he was represented by counsel but that counsel was unable to attend the deposition. Plaintiff was unable to provide Defendant's counsel with the name or contact information for his attorney but stated that he would give his attorney the contact information for Defendant's counsel. Plaintiff stated that he wished to proceed with the deposition without his attorney present. Defendant's counsel informed Plaintiff that if Plaintiff was represented by counsel, ethics rules prohibited her from taking his deposition without his attorney present.

On October 14, 2025, the Court granted Defendant's request to compel Plaintiff's deposition:

The Court GRANTS *nunc pro tunc* Defendant's request for an extension of time to September 15, 2025, for Plaintiff's counsel, if any, to file a notice of appearance. The deadline has passed, yet Plaintiff has not obtained counsel or otherwise communicated with the Court. The Court therefore GRANTS Defendant's request that the Court compel Plaintiff to sit for his deposition. The Court ORDERS Plaintiff to appear for, and participate in, his deposition. Plaintiff is cautioned that failure to appear for, and to participate in, his deposition may result in sanctions. Possible sanctions are evidentiary sanctions directing that certain facts be taken as established; and/or striking pleadings in whole or in part; and/or partial or complete dismissal of the action for failure to prosecute or failure to comply with a court order. Fed. R. Civ. P. 37(b)(2). The Court will not grant Plaintiff any further extensions of time to sit for this deposition. In addition, while Plaintiff may continue to seek counsel, the Court will not grant any further deadline extensions in this case because of Plaintiff's legal representation, lack of legal representation, or attempts to obtain counsel. The case has been pending since 2022, and Plaintiff has thus far been unable to obtain counsel. The Court notes that Plaintiff has ably prosecuted this case thus far.

Within two weeks of the date of this order, Defendant shall re-notice Plaintiff's deposition and file the notice of deposition with the Court. If Plaintiff again fails to sit for, or participate in, his deposition, Defendant may seek evidentiary sanctions, or may move for dismissal of this action for failure to prosecute or failure to obey a court order pursuant to Fed. R. Civ. P. 41(b).

Dkt. No. 37 at 4.

Defendant has rescheduled Plaintiff's deposition for November 4, 2025. Dkt. No. 38.

Defendant's counsel has informed the Court that she is concerned that she will be unable to comply with the Court's order to depose Plaintiff if, at the November 4, 2025 deposition, Plaintiff again states that he is represented by counsel yet Plaintiff's counsel is not present and Plaintiff's counsel has neither filed a notice of appearance nor contacted Defendant's counsel. Dkt. No. 39.

1 As of the date of this order, no attorney has entered an appearance on behalf of Plaintiff.

2 Plaintiff's refusal to sit for a deposition without counsel and his claim that he is
3 represented by counsel despite no counsel appearing on his behalf are preventing this case from
4 moving forward. Plaintiff appearing for his deposition without counsel while stating that he is
5 represented by counsel is a violation of the Court's October 14, 2025 Order compelling Plaintiff to
6 participate in his deposition. If Plaintiff claims to be represented by counsel, Defendant's counsel
7 cannot take Plaintiff's deposition without Plaintiff's counsel being present. If Plaintiff is
8 represented by counsel, his counsel must be present at the deposition. Defendant cannot defend
9 this case without Plaintiff's good-faith participation in the discovery process, which includes
10 participating in the deposition.

11 The Court reminds Plaintiff that the Federal Rules of Civil Procedure apply to both
12 represented and *pro se* litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) *overruled on*
13 *other grounds by Lacey v. Maricopa Cty.*, 693 F.3d 896 (9th Cir. 2012) ("Pro se litigants must
14 follow the same rules of procedure that govern other litigants."). The Federal Rules of Civil
15 Procedure require Plaintiff to allow Defendant to conduct discovery regarding any nonprivileged
16 matter that is relevant to the case, which would include taking Plaintiff's deposition. *See*
17 *generally* Fed. R. Civ. P. 26. The Court further reminds Plaintiff that both the Federal Rules of
18 Civil Procedure and the court's inherent power to manage its docket provide that terminating
19 sanctions may be appropriate where a party refuses to cooperate in discovery or refuses to obey a
20 court order. Fed. R. Civ. P. 37 governs a party's failure to cooperate in discovery and provides
21 that where a party "fails to obey an order to provide or permit discovery . . . , the court where the
22 action is pending may issue further just orders." Fed. R. Civ. P. 37(b)(2). These further orders
23 may include prohibiting the disobedient party from supporting or opposing designated claims or
24 defenses, or from introducing designated matters in evidence, or dismissing the action or
25 proceeding in whole or in part. *Id.* Under Fed. R. Civ. P. 41(b), a district court may impose
26 sanctions, including involuntary dismissal of a plaintiff's case, where that plaintiff fails to
27 prosecute his or her case, or fails to comply with the Court's orders, or fails to comply the Federal
28 Rules of Civil Procedure. Fed. R. Civ. P. 41(b); *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th

1 Cir. 1992) (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
 2 action for failure to comply with any order of the court”). Furthermore, district courts have
 3 inherent power “to manage their own affairs so as to achieve the orderly and expeditious
 4 disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (internal quotation marks
 5 and citation omitted). In exercising that power, a district court may impose sanctions including,
 6 where appropriate, dismissal. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-32 (1961).

7 **II. Directions to Parties**

8 In light of Plaintiff’s prior failures to participate in his deposition, the Court ORDERS as
 9 follows.

10 1. The Court ORDERS Plaintiff to participate in his November 4, 2025 deposition. If
 11 Plaintiff is represented by counsel, counsel must be present at the deposition. If there is no
 12 counsel present at the deposition, Plaintiff is cautioned that any statement that he is represented by
 13 counsel despite no counsel being present and no notice of appearance being filed will be
 14 considered a violation of the Court’s October 14, 2025 Order compelling him to participate in his
 15 deposition.

16 2. If Plaintiff is represented by counsel, Plaintiff’s counsel shall, by October 31, 2025:
 17 (1) file a notice of appearance; (2) contact Defendant’s counsel to meet and confer regarding the
 18 November 4, 2025 deposition; and (3) file a notice with the Court confirming that they have
 19 conferred with Defendant’s counsel regarding the deposition.


20 3. By November 11, 2025, Defendant shall file a status report with the Court,
 21 reporting whether the November 4, 2025 deposition took place or, if the deposition does not take
 22 place, why the deposition failed to proceed and address whether terminating sanctions are
 23 appropriate.

24 4. If the November 4, 2025 deposition does not take place, by November 11, 2025,
 25 Plaintiff is ordered to show cause why the Court should not dismiss this action pursuant to Fed. R.
 26 Civ. P. 41(b) for failure to prosecute or failure to comply with the Court’s October 14, 2025 Order
 27 compelling Plaintiff to participate in his deposition. To respond to the order to show cause,
 28 Plaintiff shall file an answer that addresses why the deposition did not proceed and why the Court

1 should not dismiss this action with prejudice pursuant to Fed. R. Civ. P. 41(b).

2 **IT IS SO ORDERED.**

3 Dated: 10/23/2025

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5 HAYWOOD S. GILLIAM, JR.
6 United States District Judge
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United States District Court
Northern District of California